

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.17 of 2023

Arising Out of PS. Case No.-17 Year-2022 Thana- VIGILANCE District- Patna

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Amit Lodha S/O Dr. Narendra Lodha Resident of Grand Chandra Apartment,
Fraser Road, P.S.- Gandhi Maidan, Patna- 800001, Presently posted as
Inspector General, State Crime Records Bureau, Bihar, Patna, 800001

... .. Petitioner/s

Versus

1. The State Of Bihar Throuhg The Superintendent Of Police, Special
Vigilance Unit, Patna-800001 Bihar
2. The Superintendent Of Police, Special Vigilance Unit, Patna- 800001 Bihar
3. The Additional Chief Secretary, Dept. Of Home, Govt. Of Bihar, Patna-
800001 Bihar
4. The Director General Of Police, Bihar, Patna- 800001 Bihar
5. Mr. Sanjeev Kumar Singhal, The Ex- Director General Of Police, Govt. Of
Bihar, Patna. Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate Mr. Shekhar Singh, Advocate Mr. Sumit Kumar, Advocate
For the SVU	:	Mr. Rana Vikram Singh, Advocate
For the State	:	Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 22-01-2024

Heard Mr. P.N. Shahi, learned senior counsel assisted by
Mr. Shekhar Singh, learned counsel for the petitioner, Mr. Rana
Vikram Singh, learned counsel for the Special Vigilance Unit
(SVU), Bihar and Mr. Prabhu Narayan Sharma, learned AC to
AG for the State.

2. The present writ application has been filed for the
following reliefs:-

“i. For quashing the F.I.R. of Special Vigilance
Unit, Patna Case No.17 of 2022 dated 07.12.2022



(Special Case No.80 of 2022 pending in the court of learned Special Judge, Vigilance, Patna) under sections 13(1)(b) read with 13(2) read with Section 12 of the Prevention of Corruption Act, 1988 and Sections 120(B) and 168 of the Indian Penal Code in the facts and circumstances of the case.

ii. For quashing and setting aside the investigation being done by the respondent authorities in relation to the aforesaid F.I.R. of Special Vigilance Unit, Patna Case No.17 of 2022 dated 07.12.2022 (Special Case No.80 of 2022) which is illegal, erroneous and malafidely instituted.

iii. For any other relief/reliefs for which the petitioner is entitled.”

Brief facts of the case

3. Petitioner in this case is an Officer of the Indian Police Service 1998 batch, Bihar Cadre. He is presently posted as Inspector General, State Crime Records Bureau, Bihar, Patna.

4. A First Information Report has been lodged giving rise to SVU, Patna P.S. Case No.17 of 2022 for the offences alleged under Sections 13(1)(B) r/w 13(2) r/w 12 of the Prevention of Corruption Act, 1988 (as amended 2018) and 120(B) and 168 of the Indian Penal Code which has been registered as Special Case No.80 of 2022 pending in the court of learned Special Judge, Vigilance, Patna. Petitioner is facing investigation in this case. The contents of the FIR are being reproduced hereunder for a ready reference:-

“Information

Information has been received through various verified and reliable source to the extent that Sri Amit



Lodha, an IPS officer of Bihar Cadre, the then Inspector General of Police, Magadh Range, Gaya has been earning illicitly, ever since his posting at Gaya in connivance with Friday Story Teller LLP and others in furtherance of criminal conspiracy and by indulging in private trade illegally which does not commensurate with his legal earnings.

It is alleged that the accused Sri Amit Lodha is not an established Story writer neither he was authorised nor permitted to write book and to use the same for commercial purpose. Ignoring these facts, in order to earn illicitly and to convert the black money into white he used a book written by him named "Bihar Diary" for production of a Web series named "Khaki the Bihar Chapter." by resorting to illegal activities.

It is alleged that Friday Story Teller Pvt. Ltd. has been producing film on a book written by this Amit Lodha and the reported cost of producing of his Web serial/film is around 64 crores rupees and the expenditure is being incurred by Los Gatos Production Service India LLP which is the legal representative of NETFLIX in India.

It is alleged that on 02.11.2018 there was an acquisition agreement between Sri Amit Lodha and Friday Story Teller Pvt. Ltd. and this acquisition agreement was signed for Rs. 1 only, whereas from the records available it was gathered that the accused received Rs. 12,372/- on 18.08.2021 in his HDFC bank A/c no-1651153000242 from Friday Story Teller.

It is further alleged that, with the same production house an agreement was also signed between Smt. Kaumudi Lodha in the name and style of Life Story Rights acquisition agreement in order to facilitate the transaction of illicitly, acquired wealth from one account to the account Smt. Kaumudi Lodha w/o Sri Amit Lodha. It is further alleged that from this production house Rs. 38.25 Lakhs was paid in the account of the wife of the accused between the periods 07.03.2019 to 13.09.2021. It is also alleged that the acquisition agreement was signed on 02.11.2018 between the accused Amit Lodha and Friday Story



Teller Pvt. Ltd. but the latter had paid Rs. 4.5 Lakhs and Rs. 6.75 Lakhs in the account of the wife of the accused on 27.12.2017 and 26.03.2018 respectively, much before the signing of the agreement. It is further alleged that there was heavy and regular transaction of money from the account of Friday Story Teller to the account of Komudi Lodha his wife on different dates related to the production of film, whereas as the matter of fact, the ultimate beneficiary was Amit Lodha, his wife and his associates including the Production House. The facts and the circumstances, as regards the time of agreement dated-02.11.2018 with Friday Story Teller, agreement dt- 27.10.2020 and 15.02.2022 between Friday Story Teller and Los Gatos Production Services India LLP the one sided flow of funds into the accounts of Smt. Komudi Lodha before the execution of said agreement are indicative of the ulterior motive of Shri Amit Lodha for the purpose of giving a legitimate cover to his ill gotten money.

It is further alleged that Sri Amit Lodha, being a public servant illegally entered into private trade/commercial activities with a production house and others and illicitly earned around Rs. 49,62,372/- till date by corrupt and illegal means which he cannot justify as public servant. The above criminal act amount to acquisition of property illegally by indulging into Private Trade in conspiracy with his wife and others including the Production House. During investigation more assets acquired by the accused may be unearthed.

Scrutiny of available govt. records available in public domain further reveal that the accused has acquired huge moveable/immovable properties which is over and above appear to have been illicitly acquired and prima facie could not be justified from his legitimate legal sources of income and the accused is unlikely to justify from his plausible legal sources of income.

The facts mentioned above prime facies disclose commission of offences u/s 13(1)(b) r/w 13(2) r/w 12 of PC Act 1988 (as amended 2018) and 120(B) & 168 of IPC on the part of Sri Amit Lodha the then



Inspector General of Police and others and thus this case is registered under the aforesaid sections of law and entrusted to Sri Chandra Bhushan, Dy.SP for investigation.

Sd/-

07.12.2022

(J.P. Mishra)

SP/SVU/Patna”

5. Learned senior counsel for the petitioner submits that on a bare perusal of the FIR it would appear that the allegation against the petitioner is that of indulging in ‘private trade’ in connivance with the Friday Story Tellers LLP which is an offence in terms of Section 168 IPC. He allegedly received some income which does not commensurate with the legal earnings of the petitioner, hence, Section 13(1)(b) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the ‘P.C. Act’) would be attracted. It is submitted that the entire genesis of the prosecution rests upon the allegations against the petitioner in respect of the Web Series namely ‘Khakee: The Bihar Chapter’ which is based on the fictionalized story/script written by a noted film writer Uma Shankar being inspired by the book of the petitioner.

6. For purpose of quashing of the FIR, three grounds have been raised before this Court which are as follows:-

(i) The allegations set out do not constitute commission of any cognizable offence by the petitioner;



(ii) The FIR and the entire criminal proceedings arising therefrom, including its investigation, is vitiated with malafide and will result in malicious prosecution, if allowed to continue and;

(iii) The impugned FIR has been registered without obtaining mandatory sanction under Section 17A of the P.C. Act.

7. Learned senior counsel submits that Explanation 1 of Section 13(1)(b) of the P.C. Act as amended vide Amendment Act, 2018 would not be attracted in the case of the petitioner. According to his provision, a person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for. It is submitted that from the facts stated in the FIR itself in the present case, it would be evident that the petitioner was never in possession of such resources which are disproportionate to his known sources of income.

8. Learned senior counsel for the petitioner submits that the allegations against the petitioner are false and baseless. So far as his wife is concerned, she has received the money for



execution of legal contracts with 'Friday Story Tellers' for her services in her own independent rights. It has been falsely stated in the impugned FIR that the petitioner ever since posted as I.G., Gaya had allegedly conspired with Friday Story Tellers LLP and others. It is pointed out that the petitioner was appointed as I.G., Gaya in the year 2021, while all the agreements entered between the parties were prior thereto when the petitioner was on Central deputation. It is, thus, submitted that the SVU did not have any jurisdiction to lodge the FIR in question.

9. Learned senior counsel for the petitioner submits that the facts and circumstances under which total sum of Rs.49,50,000/- was received by the wife of the petitioner from Friday Story Tellers have been fully explained by the prosecution in paragraph '5' of the FIR itself wherein it is stated that she had received the amount through banking channels pursuant to agreements with the said Company. It is submitted that the income of the wife of the petitioner has also been duly reflected in her Income Tax Return (ITR) and she has declared her bank details in the annual assets declaration of the petitioner to the Bihar Government. It is contented that the income received by the petitioner's wife is absolutely lawful, satisfactorily accounted-for and squarely covered under



Explanation 2 to Section 13(1)(b) of the P.C. Act.

10. Relying upon the judgment of the Hon'ble Supreme Court in the case of **DSP Chennai Vs. K. Inbasakaran (2006) 1 SCC 420**, learned senior counsel submits that in the said case it has been held by the Hon'ble Supreme Court that the income of the wife of public servant and the assets which are owned by the wife of the public servant, such income and assets cannot be attributed to the public servant and he cannot be held liable for having assets disproportionate to his income. The same view has been reiterated by the Hon'ble Apex Court in the case of **Akhilesh Yadav Vs. Vishwanath Chaturvedi & Ors. in Review Petition (Civil) No.272 of 2007**. It is submitted that the petitioner signed the assignment agreement in favour of the Friday Movies & T.V. Private Limited on 02.11.2018 for granting the adaptation rights of his book for a token sum of Rs.1/- only as consideration is mandatory to make the said contract legally valid and enforceable. Since the petitioner has not taken any consideration, the provisions of Section 168 IPC are not attracted. Further, the basic ingredients for the offence under Section 168 IPC is that any person who is public servant should have engaged in trade while holding such office. Learned senior counsel relies upon the judgment of the Hon'ble Supreme



Court in the case of **State of Gujarat VS. Maheshkumar Dhirajlal Thakkar AIR 1980 SC 1167.**

11. It is submitted that the action of the petitioner in entering into assignment agreement would not attract any criminality. Reference has been made to the judgment of the Hon'ble Supreme Court in the case of **Kanwarjit Singh Kakkar VS. State of Punjab (2011) 13 SCC 158** to submit that where no criminality is involved in the subject actions, even acts which violate government directions or conduct rules do not constitute an offence either under Section 168 IPC or under P.C. Act.

12. Learned senior counsel submits that the SVU has filed a counter affidavit in this case in which the investigating agency has merely restated the details of the assets already declared by the petitioner. It is submitted that the passport entries would show that the allegation that the petitioner had gone to France in the year 2018 is not correct and further allegations in the counter affidavit that the petitioner has constructed any house in Jaipur is also bereft of any material and is patently false.

13. It is further stated that the figures cited in the counter affidavit as regards the income tax statement of the



accused and mutual fund investment figures are grossly exaggerated inasmuch as the market values of the assets have been taken instead of the cost of acquisition and thereby raising serious doubts over the intent as well as competence of the investigating agency.

14. It is submitted that the SVU does not have any quantum of disproportionate assets even after more than a year of the registration of the FIR.

15. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Surendra Singh Rathod & Anr. Vs. State of Rajasthan S.B. CrI. Misc. (Petition) No.9187 of 2022**, it is submitted that the Hon'ble Court has been pleased to hold that it would be abuse of the process of law for an FIR registered in a causal and negligent manner to continue and on this ground the FIR was quashed.

16. It is submitted that in the case of **Satish Mehra Vs. State of NCT of Delhi & Anr. AIR 2013 SC 506** it has been held that a criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused.



17. It is pleaded that the impugned FIR has been registered in non-compliance of the statutory provisions which constitute an express legal bar and in terms of **State of Haryana VS. Bhajan Lal & Ors. 1992 Supp (1) SCC 335** the same deserves to be quashed. It is submitted that there is an element of malice in the impugned FIR and the criminal action initiated against the petitioner is evident from the fact that on the one hand Section 168 IPC has been invoked on the ground that the petitioner being a public servant has engaged in trade while holding such office and on the other hand it has been stated that the provisions of the Section 17A of the P.C. Act are not required to be followed since the alleged acts done by the petitioner do not fall within the ambit of act done in discharge of official duty.

18. Learned senior counsel for the petitioner submits that debates in the Rajya Sabha and Lok Sabha held on 19.07.2018 and 24.07.2018, the intention of the legislatures behind incorporation of Section 17A of the P.C. Act may be found. It is submitted that the impugned FIR has been registered in non-compliance of Circular No.428/07/2021-AVD.IV(B) dated 03.09.2021 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension regarding



‘Standard Operating Procedures (SOPs)’ for processing of cases under Section 17A of the P.C. Act. The Hon’ble Supreme Court of India in **Yashwant Sinha and Ors. Vs. Central Bureau of Investigation and Ors. (Review Petition (Crl.) No.46 of 2019)** has held that in the absence of previous approval under Section 17A of the P.C. Act, there cannot be enquiry, inquiry or investigation in such cases. Further the Hon’ble Division Bench of Bombay High Court also in the case of **Anil Vasantrao Deshmukh Vs. State of Maharashtra, 2021 SCC Online Bom 1192** has held that dishonest performance falls under the provisions of offences punishable under IPC and P.C. Act, however, there has to be a reasonable nexus between the act complained and the discharge of official duty and as such the prior sanction under Section 17A of the P.C. Act is mandatory in such cases. It is submitted that in the present case the prosecution has shown no nexus between official duty of the accused and the production of the web series who has not been arraigned as an accused in the impugned FIR and the prosecution of their own admission has no evidence against the producers till date.

19. Learned senior counsel has further relied upon a judgment in the case of **State of Punjab VS. Davinder Pal**



Singh Bhullar and others (2011) 14 SCC 770 and a judgment of the Hon'ble Karnataka High Court in the case of **Dr. Ashok V. Vs. the State by Hon'ble Lokayuktha of Karnataka & Anr. Criminal Petition No.531/2022** to submit that in absence of mandatory approval for grant of registration of a crime, the very registration of the crime tumbles down and whole paraphernalia of impugned FIR, subsequent investigations etc. remains illegal, void and non-est in law.

20. Learned senior counsel for the petitioner has raised an issue of requirement of holding a preliminary inquiry in the facts of this case. It is submitted that the impugned FIR has been registered without holding a preliminary inquiry and it has been done on the same date within three hours of receiving the source information. It is submitted that in terms of the judgment of the Hon'ble Constitution Bench of the Supreme Court in the case of **Lalita Kumari Vs. Govt. of U.P. & Ors. (2014) 2 SCC 1** and another judgment in the case of **P. Sirajuddin Etc. Vs. the State of Madras 1971 CRI.LJ 523**, holding of preliminary inquiry was essential and ought to have been done without any exception.

Stand of Respondent No.1 & 2

21. Learned counsel for the respondent nos. 1 and 2 has opposed the writ application. It is submitted that the FIR against the petitioner discloses cognizable offences which are serious in



nature and the investigation of this case is at a very crucial stage, therefore, this Court need not exercise its extraordinary writ jurisdiction to quash the FIR and scuttle the investigation at its inception.

22. Learned counsel submits that the petitioner is a public servant, he had a permission from the level of DG, BSF for publication of his book through Penguin house only but before entering into an agreement with a company for production of a film/web series on his written book the petitioner did not take any permission from the competent authority which would attract Section 168 IPC. It is further submitted that the wife of the petitioner has signed 'Right Assignment Agreement' for consideration amount of Rs. 25 lacs after being agreed by the petitioner to grant rights for production of film on his story. The wife of the petitioner was not engaged anywhere else before signing the agreement with Producer-2. Only after written agreement, she has signed another agreement with the same company as story consultant and the company has paid another Rs.27 lacs to her. Payment of such huge amount to a new comer is under suspicion and it indicates that the amount has been paid for Amit Lodha by adopting another way in the name of his wife. The investigation on this point is still pending



and subject to verification.

23. Learned counsel submits that the FIR has been registered on the basis of information and the allegations which have been corroborated with the materials available with the SVU.

24. As regards issue of preliminary inquiry, learned counsel submits that a preliminary inquiry is only conducted or required when information received is not sufficient to register a regular case, however, when the information received is adequate to register a regular case no preliminary inquiry is necessary. It will depend upon the facts of the case and no hard and fast rule may be laid down for this purpose. In the case of **State of Telangana VS. Managipet (2019) 19 SCC 87** and **CBI and Anr. Vs. Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi and Anr. AIR 2021 SC 5041**, it has been held that a preliminary inquiry cannot be made mandatory for all cases of alleged corruption. In the case of **Managipet** (supra), the Hon'ble Supreme Court has noted that the decision in **Lalita Kumari** (supra) held that preliminary enquiry was desirable in cases of alleged corruption but that would not vest a right in the accused to demand a preliminary inquiry. Reliance has been placed on paragraphs 28, 29, 30, 32, 33 and 34 of the judgment



of the Hon'ble Apex Court in **Managipet** (supra).

25. Learned counsel submits that in the present case the petitioner is facing an allegation of being in possession of disproportionate assets and there are ample materials which would require an investigation, thus, the petitioner cannot claim as a matter of right that preliminary enquiry must be done because he does not have this right in terms of the judgments of the Hon'ble Supreme Court.

26. As regards applicability of Section 17A of the P.C. Act, learned counsel for the respondent nos.1 and 2/SVU would submit that the protection of Section 17A is available to a public servant and it operates against a police officer in conducting any enquiry or investigation into any alleged offence which have been committed by a public servant under the P.C. Act without previous approval of the prescribed authority. It is submitted that the bar would apply only when the offence allegedly committed by a public servant under the Act relates to any recommendation made or decision taken by such public servant in discharge of his official functions or duties. It is submitted that Section 17A of the P.C. Act does not apply to cases involving arrest of persons from the spot on the charge of accepting or attempting to accept any undue advantage for



himself or any other person. The issue raised by the petitioner as to applicability of Section 17A of the P.C. Act is to be considered in the given facts and circumstances of the case. The investigation has revealed so far that the petitioner and his family members are holding twelve bank accounts in different banks with huge balances as on 07.12.2022. The details have been provided in the counter affidavit.

27. Learned counsel submits that the petitioner has disclosed his income showing that he and his wife are engaged in business and speculative business and are earning from these heads. The petitioner is a public servant and how a public servant is declaring income from business and speculative business apart from salary is a matter of investigation. It is in teeth of Rule 13(1)(a) and 14 of the All India Services (Conduct) Rules 1968 and Section 168 IPC. It is submitted that a close and meticulous scrutiny of Section 17A of the P.C. Act reveals that it is not that every offence alleged to have been committed by the public servant under the Act would need prior approval. In fact prior approval under Section 17A would be required only when the alleged offences are relatable to any recommendation made or decision taken by public servant seems to be the heart and soul of the above Section.



28. It is submitted that in the case of **Hori Ram Singh VS. Emperor, AIR 1939 PC 43, H.B. Gill and Anr. Vs. King, AIR 1948 PC 129 and Matajog Dubey Vs. H.C. Bhari, AIR 1956 SC 44** the Courts have held that the crucial test to determine whether a public servant acts or purports to act in official capacity by holding that, if challenged, he can reasonably claim that, what he did was by virtue of his office, rather it is the quality of the act that was important and if it falls within the ambit of its official acts/duties, the protection contemplated under Section 197(1) of Cr.P.C. will be attracted. The same analogy would apply to Section 17A of the P.C. Act. In **S.B. Saha and Anr. Vs. M.S. Kohchar, AIR 1979 SC 1841**, it has been held that for prosecuting public servant for dishonest misappropriation or conversion of goods which they have seized, sanction was not essential.

29. It is submitted that the protection envisaged under Section 17A of the P.C. Act is not a blanket protection and when the act of any official/person is ex-facie criminal or constitute an offence and further any act which involves amassing wealth disproportionate to his known sources of income, breach of trust and misappropriation of funds being ex-facie criminal, prior approval of the government/competent



authority would not be required/necessary. Reliance has been placed on the judgment in the case of **T.O. Suraj Vs. State of Kerala, 2021 SCC Online Ker 2896, Satish Pandey and Ors. Vs. UOI and Ors., Manu/CG/0097/2020, Shankar Bhat Vs. State of Kerala and Ors. CRL. M.C. No.7542/2018 dated 27.08.2021 and Rajendra Prasad Vs. The State of Bihar 2022(4) BLJ 189.**

30. Learned counsel further submits that a provision like Section 17A of the P.C. Act in an anti-corruption law has to be interpreted in such a fashion to strengthen fight against the corruption, where two constructions are eminently reasonable, the court has to accept the one that seeks to eradicate corruption than the one which seeks to perpetuate it as held by the Hon'ble Supreme Court in the case of **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh (2012) 3 SCC 64.** In the case of **Subramanian Swamy VS. Director, CBI AIR 2014 SC 2140,** the Hon'ble Supreme Court held that the criminal justice system mandates that any investigation into the crime should be fair, in accordance with law, should not be tainted. It is equally important that interested or influential persons are not able to misdirect or hijack the investigation so as to throttle a fair investigation resulting in offender escaping the punitive course



of law which are important facets of rule of law.

31. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Superintendent of Police, CBI & Ors. Vs. Tapan Kumar Singh AIR 2003 SC 4140** and in the case of **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Anr. AIR 2021 SC 1918** to submit that it is only in cases where no cognizable offence is disclosed in the FIR that the Court will not permit an investigation to go on. It is submitted that the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint and a criminal proceeding ought not to be scuttled at the initial stage. It is further submitted that in a matter relating to an FIR with respect to disproportionate assets case against a public servant, recently the Hon'ble Supreme Court in the case of **State of Chhattisgarh and Anr. Vs. Aman Kumar Singh and Ors.** along with **Uchit Sharma Vs. State of Chhattisgarh and Ors.** reported in **(2023) 6 SCC 559** has held that High Courts should maintain a hands-off approach and not quash a first information report pertaining to "corruption" cases, specially at the stage of investigation. Paragraph '80' thereof has been relied upon. It is submitted that like the case of **CBI & Anr. Vs. Thommandru**



Hannah Vijayalakshmi @ T.H. Vijayalakshmi and Anr.

(supra) the present case is also based on sourced information which have been duly and credibly verified. The Hon'ble Supreme Court has well explained the category of cases in the case of **State of Karnataka VS. J. Jayalalitha (2017) 6 SCC 263**.

32. Learned counsel submits that the plea taken by the petitioner with regard to jurisdiction and limitation etc. are not worth acceptable. It is submitted that the entire service period of the petitioner from 1998 to 07.12.2022 have been taken as the check period to arrive at a logical conclusion in respect of disproportionate assets. During check period, the petitioner was posted at several places in the jurisdiction of SVU. He has accumulated assets either on his own name or in the name of his family members. During the period, he was posted as I.G., Magadh Range, Gaya, in pursuance of his agreement he had visited Mumbai in August, 2021 to meet the production team of web series and had received Rs. 12,372/- on 18.08.2021 from Friday Story Teller LLP in his HDFC bank account. During his posting as I.G., Magadh Range, Gaya again he had visited the shooting site at Kurka village near Ddaltanganj, Jharkhand on 16th September, 2021 to monitor the production/creation of web



series. The petitioner stayed with the production team there in the same hotel on 17.09.2021 and payment of Rs.75,900/- has been paid by the company. It is submitted that accumulation of disproportionate assets is a continuous offence and the above facts are enough to prove the jurisdiction of SVU, Bihar, Patna to register the FIR against the petitioner and others.

33. It is lastly submitted that in the facts of the present case, the investigation must be allowed to reach its logical conclusion. The claims of the petitioner and his contentions in support thereof are devoid of merit and as such this application is fit to be dismissed.

Consideration

34. Having heard learned senior counsel for the petitioner and learned counsel for the SVU and upon perusal of the records, this Court finds that the information which are part of the FIR in this case would demonstrate that the allegation against the petitioner is that of illicitly acquiring wealth as a public servant. It is alleged that there were regular transactions' of money from the account of Friday Story Tellers to the account of Komudi Lodha, the wife of the petitioner on different dates related to the production of a film and the ultimate beneficiary of the same was this petitioner, his wife and his



associates. The allegations are being investigated. The allegations, without adding or subtracting anything out of it, if taken on as it is, it cannot be said that no cognizable offence would be made out.

35. There is another allegation that the petitioner being a public servant had illegally entered into a private trade with a production house and earned around Rs. 49,62,372/-by corrupt and illegal means. At this stage, this Court is of the considered opinion that the contention of the SVU that the scrutiny of available government records available in public domain reveal that the accused has acquired huge movable/immovable properties which is over and above and have been illicitly acquired, cannot be examined by this Court by holding a pre-matured trial.

36. While arguing the writ application, learned senior counsel for the petitioner has attempted to furnish a lot of explanations and justifications behind the alleged transactions with Friday Story Teller LLP, however, this Court is of the opinion that such explanations and justifications are not to be considered by this Court at this stage. The case is still at investigation stage and the SVU in its report submitted before this Court has stated that in order to arrive at a logical



conclusion in this case at least six more months is needed. Learned counsel for the SVU has also taken the same plea in course of hearing of this case.

37. The submission of learned senior counsel for the petitioner that lodging of the FIR in the present case without going for a preliminary inquiry is a malafide action would not impress upon this Court as it is well settled that if the source informations are credible and those indicate towards commission of a cognizable offence, the accused cannot be allowed to take a plea that no FIR could have been registered without holding a preliminary inquiry. Learned counsel for the SVU has rightly relied upon the judgment of the Hon'ble Supreme Court in the case of **Managipet** (supra) and **T.H. Vijayalakshmi** (supra). No malafide could be read only because a First Information Report has been lodged in this matter. Paragraph '33' and '34' of **Managipet** (supra) are being reproduced hereunder for a ready reference:-

“**33.** In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the accused officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of prima facie allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure,



he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. It cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed. Reference in this regard, is made to a judgment of this Court in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] wherein, this Court held inter alia that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused and also where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

34. Therefore, we hold that the preliminary inquiry warranted in *Lalita Kumari* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient.”

38. As regards applicability of Section 17A of the P.C.

Act, this Court is of the considered opinion that where credible informations are received against a public servant of having accumulated assets disproportionate to his known source of



income, unless the facts of the case rests on a very special feature, no interference would be required in the garb of applicability of Section 17A of the P.C. Act. The judgment in the case of P. Sirajuddin (supra) is clearly distinguishable on facts of the said case.

39. The observations of the Hon'ble Supreme Court in the case of **Devendra Kumar Singh & Ors. Vs. CBI and Ors 2019 (1) Crimes 726** saying that when the act of a public servant is ex-facie criminal or constitutes an offence, a cognizable one, prior approval of government/competent person would not, at all, be necessary shall be the guiding factor. In the case of **Aman Kumar Singh** (supra), the Hon'ble Supreme Court has observed in paragraph '79' and '80' as under:-

“ 79. Finally, following the above, what is of substantial importance is that if criminal prosecution is based upon adequate evidence and the same is otherwise justifiable, it does not become vitiated on account of significant political overtones and mala fide motives. We can say without fear of contradiction, it is not in all cases in our country that an individual, who is accused of acts of omission/commission punishable under the PC Act but has the blessings of the ruling dispensation, is booked by the police and made to face prosecution. If, indeed, in such a case (where a prosecution should have been but has not been launched) the succeeding political dispensation initiates steps for launching prosecution against such an accused but he/she is allowed to go scot-free, despite there being materials against him/her, merely on the ground that the action initiated by the current regime is mala fide in the sense that it is either to settle scores with the earlier regime or to wreak vengeance against the



individual, in such an eventuality we are constrained to observe that it is criminal justice that would be the casualty. This is because, it is difficult to form an opinion conclusively at the stage of reading a first information report that the public servant is either in or not in possession of property disproportionate to the known sources of his/her income. It would all depend on what is ultimately unearthed after the investigation is complete. Needless to observe, the first information report in a disproportionate assets case must, as of necessity, *prima facie*, contain ingredients for the perception that there is fair enough reason to suspect commission of a cognizable offence relating to “criminal misconduct” punishable under the PC Act and to embark upon an investigation.

80. Having regard to what we have observed above in paras 47 to 50 (*supra*) and to maintain probity in the system of governance as well as to ensure that societal pollutants are weeded out at the earliest, it would be eminently desirable if the High Courts maintain a hands-off approach and not quash a first information report pertaining to “corruption” cases, specially at the stage of investigation, even though certain elements of strong-arm tactics of the ruling dispensation might be discernible. The considerations that could apply to quashing of first information reports pertaining to offences punishable under general penal statutes *ex proprio vigore* may not be applicable to a PC Act offence. Majorly, the proper course for the High Courts to follow, in cases under the PC Act, would be to permit the investigation to be taken to its logical conclusion and leave the aggrieved party to pursue the remedy made available by law at an appropriate stage. If at all interference in any case is considered necessary, the same should rest on the very special features of the case.”

40. In the present case, as per the allegations and the evidences which have been collected so far, it is contended that the petitioner has accumulated assets valued more than 7 crores even as his total income from all legal sources would not be more than 2 crores in gross without any deductions. The



investigation of the case is still pending and the SVU has come out with a statement in its report that the investigation will take at least six more months.

41. In the facts and circumstances of the case, this Court finds no merit in this writ application. No interference is required by this Court to scuttle the investigation of the case.

42. Having said so, this Court cannot remain oblivious of the fact that in this case the First Information Report has been lodged on 07.12.2022 and more than one year has gone in the on-going investigation. In the case of **Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar** reported in **AIR 1979 SC 1360**, the Hon'ble Supreme Court has held that speedy trial is a part of fundamental right to life and liberty. It is an integral and essential part of Article 21 of the Constitution of India. A proper and fair investigation has been held to be an essential component of the concept of speedy trial and it has its roots embedded in a reasonably fair and just procedure.

43. In **A.R. Antulay & Others Vs. R.S. Nayak & Anr.** reported in **(1992) 1 SCC 225**, the Hon'ble Supreme Court held that Right to speedy trial flowing from Article 21 of the Constitution of India encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial.



44. In the case of Amar Nath Chaubey Vs. Union of India & Others reported in **(2021) 11 SCC 804**, the Hon'ble Supreme Court while dealing with duty of police and aim of the investigation held that a fair investigation is a necessary concomitant of Articles 14 and 21 of the Constitution of India and being a constitutional Court, this Court has the bounden obligation to ensure adherence by the police. Paragraph '11' of the judgment in Amar Nath Chaubey reads as under:-

“**11.** The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.”

45. In Mohammed Zubair Vs. State of NCT of Delhi & Others reported in **AIR 2022 SC 3649**, the Hon'ble Supreme Court has inter-alia reiterated paragraph '60' of the judgment



rendered in the case of **Arnab Ranjan Goswami Vs. Union of India** reported in **(2020) 14 SCC 12** which reads as under:-

“60.[...] Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.”

46. This Court would, thus, direct the investigating agency to take the investigation of this case to its logical end within a period of six months from today. The investigating agency i.e. SVU shall ensure that the investigation be conducted in proper and fair manner in accordance with law. The investigation must be fair and in no case the pending investigation be allowed to be used as ruse for targeted harassment. The petitioner shall be obliged to cooperate with the investigating agency as and when required.

47. While parting with this brief, this Court makes it clear that no part of the observations of this Court hereinabove



would cause prejudice to the petitioner in the on-going investigation and it will be open to him to take all such pleas which may be available to the petitioner at an appropriate stage in accordance with law.

48. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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